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**MAILED**

**MAY 12 2009**

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Yang et al.	:	
Application No. 10/047,352	:	ON APPLICATION FOR
Filed: January 14, 2002	:	PATENT TERM ADJUSTMENT
Atty Docket No. 0109015/024	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) and 37 C.F.R. §§1.702 - 1.705 filed March 16, 2009. Applicants submit that the application is entitled to an additional 490 days of patent term adjustment, which would increase the patent term adjustment from 200 days at the time of the mailing of the notice of allowance to 690 days. Citing Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), applicants request this correction on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b). (This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.703(b) calculation until the actual date of issuance of the patent has been determined. Accordingly, it is still too soon to make a determination as to the correctness of any period of adjustment that will or will not be entered pursuant to § 1.703(b)).

Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

It is acknowledged that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including -

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

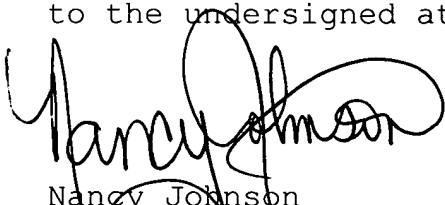
It is noted that a Request for Continued Examination (RCE) was first filed in this application on May 19, 2006.

The determination of the patent term adjustment at the time of the mailing of the notice of allowance remains two hundred (200) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded and is not consumed by the filing of a request for continued examination).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

## PTA Calculations for Application: 10/047352

Application Filing Date:	01/14/2002	PTO Delay (PTO):	756
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	556
Post-Issue Petitions:	0	Total PTA (days):	200
PTO Delay Adjustment:	0		

## File Contents History

Number	Date	Contents Description	PTO	APPL	START
85	01/13/2009	MAIL NOTICE OF ALLOWANCE	184		59
84	01/09/2009	ISSUE REVISION COMPLETED			
83	01/09/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
82	01/09/2009	CASE DOCKETED TO EXAMINER IN GAU			
81	12/16/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
80	12/16/2008	DOCUMENT VERIFICATION			
79	12/08/2008	NOTICE OF ALLOWABILITY			
73	10/14/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
72	10/14/2008	REFERENCE CAPTURE ON IDS			
71	10/14/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		215	59
70	10/14/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
69	10/16/2008	DATE FORWARDED TO EXAMINER			
68	09/29/2008	SUPPLEMENTAL RESPONSE			
67	08/22/2008	DATE FORWARDED TO EXAMINER			
66	07/28/2008	SUPPLEMENTAL RESPONSE			
65	08/06/2008	DATE FORWARDED TO EXAMINER			
64	07/28/2008	SUPPLEMENTAL RESPONSE			
63	02/01/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
62	06/09/2008	DATE FORWARDED TO EXAMINER			
61	06/06/2008	SUPPLEMENTAL RESPONSE			
60	04/07/2008	DATE FORWARDED TO EXAMINER			
59	03/13/2008	RESPONSE AFTER NON-FINAL ACTION			

58	02/01/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
57	08/26/2003	CLAIMS PTO			
56	02/01/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
55	12/13/2007	MAIL NON-FINAL REJECTION			
54	12/10/2007	NON-FINAL REJECTION			
53	08/24/2007	DATE FORWARDED TO EXAMINER			
52	08/21/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
51	08/24/2007	DATE FORWARDED TO EXAMINER			
50	08/21/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		32	42
49	08/24/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
48	08/21/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
47	08/21/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
46	07/23/2007	MAIL ADVISORY ACTION (PTOL - 303)			
45	07/20/2007	ADVISORY ACTION (PTOL-303)			
44	06/28/2007	DATE FORWARDED TO EXAMINER			
43	06/20/2007	AMENDMENT AFTER FINAL REJECTION			
42	04/20/2007	MAIL FINAL REJECTION (PTOL - 326)			
41	04/16/2007	FINAL REJECTION			
40	01/26/2007	DATE FORWARDED TO EXAMINER			
39	01/18/2007	SUPPLEMENTAL RESPONSE		1	37
38	01/24/2007	DATE FORWARDED TO EXAMINER			
37	01/17/2007	RESPONSE AFTER NON-FINAL ACTION		92	35
36	01/17/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
35	07/17/2006	MAIL NON-FINAL REJECTION			
34	07/13/2006	NON-FINAL REJECTION			
33	05/20/2006	DATE FORWARDED TO EXAMINER			
32	05/19/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
31	05/20/2006	DATE FORWARDED TO EXAMINER			
30	05/19/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		39	27
29	05/20/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			

28	05/19/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
27	01/10/2006	MAIL FINAL REJECTION (PTOL - 326)			
26	01/09/2006	FINAL REJECTION			
25	10/29/2005	DATE FORWARDED TO EXAMINER			
24	10/21/2005	RESPONSE AFTER NON-FINAL ACTION		176	19
23	10/21/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
22	07/19/2005	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
21	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
20	05/11/2005	DATE FORWARDED TO EXAMINER			
19.1	04/28/2005	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
19	04/28/2005	RESPONSE AFTER NON-FINAL ACTION		1	18
18	01/27/2005	MAIL NON-FINAL REJECTION			
17	01/24/2005	NON-FINAL REJECTION			
16	01/18/2005	WORKFLOW INCOMING AMENDMENT IFW			
15	11/16/2004	DATE FORWARDED TO EXAMINER			
14	11/01/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
13	11/01/2004	WORKFLOW INCOMING AMENDMENT IFW			
12	10/06/2004	MAIL RESTRICTION REQUIREMENT	572		-1
11	10/01/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
10	08/26/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	03/07/2002	CASE DOCKETED TO EXAMINER IN GAU			
8.7	01/14/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	01/14/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	01/14/2002	PRELIMINARY AMENDMENT			
6	02/19/2002	APPLICATION DISPATCHED FROM OIPE			
5	02/19/2002	APPLICATION IS NOW COMPLETE			
3	02/08/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	01/29/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/14/2002	INITIAL EXAM TEAM NN			

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#### EXPLANATION OF PTA CALCULATION